Service Date: September 29, 2000

# DEPARTMENT OF PUBLIC SERVICE REGULATION BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MONTANA

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IN THE MATTER OF COLUMBIA HEIGHTS	)	UTILITY DIVISION
WATER COMPANY, Complaints Concerning	)	
Adequacy of Service and Investigation of	)	DOCKET NO. D98.10.246
Transfer of Ownership	)	
	)	ORDER NO. 6132b

### **FINAL ORDER**

### Introduction

1. In November 1998 the Public Service Commission commenced this proceeding for the purpose of investigating customer complaints and inquiries regarding the transfer of ownership and the adequacy of service of Columbia Heights Water Company (CHWC). The transfer of ownership of CHWC has been resolved. The adequacy of service (service quality) of CHWC has not been resolved. The PSC has now held three formal public hearings pertaining to CHWC service quality. One or more of the public hearings were accompanied by informal public meetings.

## Findings of Fact

- 2. CHWC is a privately owned public utility providing water service to customers in and near Columbia Heights, a community just west of Columbia Falls, Montana. For various reasons the exact number of customers served by CHWC has remained a mystery, but the predominant view is that CHWC presently has about 60 customer accounts, some being business customers, but most being residential customers.
- 3. The beginning of what is now the CHWC water system could have been constructed as early as 1940, at least comments to that effect have been made in public hearings or meetings on this matter. Records of the PSC do not evidence the existence of the CHWC system or PSC regulation of the system until around 1960, at which time the Columbia Heights

area was referred to as a platted township, the utility was referred to as Columbia Heights Water Service, and the utility had 12 customers. By 1970 the CHWC system had become owned and operated by Steele Water Supply. The Steele operation was purchased by William Gress in 1980 and became CHWC. In October 1997, Gress sold CHWC to Larry Streeter, Sr. In March 1999, CHWC was purchased by Larry Streeter, Jr., from the estate of Larry Streeter, Sr. CHWC is presently owned by Streeter, Jr., in sole proprietorship, and has been so owned since March 1999.

- 4. Comments received in the several public hearings and meetings on this matter have indicated that CHWC service has been unsatisfactory for at least the past 10 years, complaints have been made during that period, presumably to the PSC, and nothing has been done to cure the problems. PSC records disclose a complaint concerning inadequate water supply in 1967. That problem was resolved by the utility through enforcement of irrigation restrictions, in accordance with existing provisions within the operating rules of the utility at that time. However, until the consumer complaints which initiated the present investigation in 1998, the PSC records do not include any other complaints pertaining to CHWC service quality.
- 5. Following the first public meeting and hearing on the matter, the PSC issued an order concluding that the quality of service provided by CHWC is not reasonably adequate and CHWC is therefore in violation of § 69-3-201, MCA (public utilities must provide reasonably adequate service). *PSC Order No. 6132, December 30, 1998.* At that time the service quality problems included certain administrative problems, such as poor customer relationships, inadequate record keeping, lack of accurate and verifiable customer numbers and identities, and irregular billing practices. The service quality problems also included a number of physical problems. Frequently, if not continually, unreasonably low water pressure and poor water quality, at least from an aesthetic standpoint, existed. The aesthetical problems included sand, black droplets, a sulfur smell, staining of appliances, and others. As mentioned above, the problems did not appear to be entirely new to the CHWC system, as some customers indicated that the system has experienced problems for at least the previous ten years.
- 6. Given the problems were pre-existing, ownership was then in an estate that could demonstrate no ability to operate the system, and Streeter, Jr., who expressed a positive attitude

and assurances towards improving service quality, was then only a prospective owner of CHWC, the PSC suspended enforcement proceedings and established a planning and reporting period for CHWC to develop and implement solutions to the system and service problems. CHWC's planning and reporting were sporadic and not in complete accordance with the PSC-required reporting schedules. Many of CHWC's plans for improvements, expressed orally or in writing to the PSC, have apparently not been implemented.

- 7. Renewed customer inquiries and complaints in August 1999 resulted in the PSC removing the suspension of proceedings. On September 15, 1999, the PSC conducted a second public hearing on the adequacy of CHWC's service. Testimony at hearing did not establish that CHWC's overall service had improved, but also did not establish that CHWC's overall service had become worse. Nevertheless CHWC's service remained inadequate in violation of § 69-3-201, MCA. The CHWC system problems with low water pressure and poor water aesthetics had not changed. Customers were still experiencing low water pressure and poor water quality from an aesthetic standpoint. The problems with aesthetics continued to include sand, black droplets, a sulfur smell, staining of appliances and others. CHWC's efforts, if any, to eliminate the low water pressure and aesthetical problems had not been successful.
- 8. At the September 1999 hearing interest in formation of a water district was expressed. CHWC, apparently desiring to sell the system, subsequently pursued this alternative to utility service and discovered that a water district (Flathead County Water District #101) has existed for the Columbia Heights service area for many years, but had never become functional. At times following the hearing it appeared that efforts towards making the water district functional were progressing. The district became manned by appointed directors. The district expressed an interest in purchasing the CHWC system. Therefore, the PSC again suspended enforcement, anticipating that the problems with CHWC management and service would within a reasonable time be resolved through the district acquiring, improving, and operating the system. In efforts towards a transfer to the district CHWC has obtained an appraisal and has apparently resolved a title issue related to one of the CHWC wells.

- 9. Although CHWC's efforts pertaining to the transfer of CHWC to the district are commendable and the PSC agrees that a district is most probably the best way through which problems with the CHWC can be eliminated at least cost to the customers served, the PSC has now allowed approximately twenty months since the initial PSC order concluded that CHWC is providing inadequate service and identified the problems that expected improvements were to address and it has been about twelve months since interest in the district was first expressed. This is more than sufficient time for the improvements to have been planned and implemented by CHWC and it seems more than sufficient time for the district and CHWC to decide whether a transfer can and will occur.
- 10. On its own motion the PSC conducted a third CHWC service-quality hearing on August 30, 2000. CHWC did not appear at the hearing (later explaining that its address had changed and it did not receive notice of the hearing). Testimony and public comments at hearing established that the service quality of CHWC has been deteriorating. In addition to previously expressed problems, which are becoming worse, the CHWC customers are concerned that Streeter, Jr., is no longer licensed as a water system operator, has been out of compliance with state water testing and monitoring requirements, and may be delinquent in paying bills for power used to operate the system. It also appears that some customers have turned to self help through not paying CHWC water bills, flushing the system (to the detriment of other customers) to prevent clogging and damage of appliances, and installing water purification systems. Some do not drink the water. Some prefer not to use it at all.
- The CHWC system has been at the stage of inadequate service in regard to physical aspects of service and it remains that way. In addition it appears from comments at the most recent hearing that CHWC is inaccessible to customers, difficult to communicate with and unresponsive when accessible. It also appears that CHWC and the district, for reasons probably both could make some effort to overcome, are not communicating. It also appears that CHWC has made no notable or measurable efforts to improve the CHWC system.

12. CHWC's existing rates for water service appear relatively low and CHWC improvements to the CHWC system most probably cannot be accomplished under CHWC's present rate structure. CHWC has made no effort to try to fund required improvements through increases in rates. It is incumbent on CHWC to make proper application to the PSC for rate changes as those become justified by improvements to the CHWC system.

#### Conclusions of Law

- 13. All findings of fact which can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this Order are incorporated herein as conclusions of law.
- 14. As a public utility CHWC is regulated by the PSC pursuant to provisions within Title 69, MCA. The PSC has jurisdiction over CHWC and the quality of service of CHWC. CHWC is a public utility pursuant to § 69-3-101, MCA. As a public utility CHWC is subject to the regulatory authority of the PSC. As a public utility CHWC is obligated to provide reasonably adequate service in accordance with § 69-3-201, MCA.
- 15. The failure of CHWC to maintain reasonable water pressure for its customers constitutes a failure of CHWC to provide reasonably adequate service and is in violation of § 69-3-201, MCA. The failure of CHWC to provide water which is reasonably free from aesthetical problems, such as sand, black drops, sulfur smell, and staining, and the customer inconveniences these things cause, constitutes a failure of CHWC to provide reasonably adequate service and is in violation of § 69-3-201, MCA. The failure of CHWC to be accessible to customers and responsive to customer inquiries and concerns is a failure of CHWC to provide reasonably adequate service and is in violation of § 69-3-201, MCA.
- 16. It also appears that CHWC may be in violation of Montana water quality laws, by not testing and monitoring its supplies and system in accordance with state regulations. It also appears that Streeter, Jr., believed to be the only operator of CHWC, is no longer licensed as a system operator in accordance with state requirements. A failure of CHWC to be in compliance

with Montana water quality laws and related state requirements is a failure of CHWC to provide reasonably adequate service and is in violation of § 69-3-201, MCA.

17. The PSC determines that CHWC is not providing adequate service and remains in violation of § 69-3-201, MCA. The PSC determines that CHWC should be compelled to take action to come into compliance with state laws, including making improvements to the CHWC system to eliminate the low water pressure and the aesthetical problems with the water supplied. In regard to compliance, whether the district will ever acquire the CWHC system is unknown, and until that time, if it occurs at all, it remains the case that CHWC is a public utility subject to the regulatory authority of the PSC, is obligated by law to provide reasonably adequate service, and should be compelled to do so.

#### **ORDER**

IT IS HEREBY ORDERED that CHWC must do the following in strict accordance with the times indicated. The times for compliance begin running from the service date of this order (see above). The failure of CHWC to make reports to the PSC in a timely manner as herein required by the PSC is a violation of § 69-3-206, MCA. Refusal or failure to meet the requirements stated herein within the times indicated may result in further PSC action or civil action as may be allowed by law and may include fines. *See*, § 69-3-209, MCA.

- 1. Within 30 days of the service date of this order CHWC must:
- a. advise, or re-advise, in writing, each of the directors of the water district whether CHWC is willing to sell the CHWC system to the district, and, if so, the price at which it is offered for sale and whether that price is negotiable (the district will then be able to determine where it stands in relation to available funding and the purchase);
- b. contact the local state water quality agency (Department of Environmental Quality, Permitting and Compliance Division, Kalispell) to determine requirements CHWC must meet to be in complete compliance with state water quality requirements administered by that agency, including regulations requiring water system operators to be and remain licensed;

- c. contact the power company providing services to CHWC and determine whether CHWC is current in payments for those services, and, if CHWC is not current, become current by making the required payments or making arrangements agreeable to the power company to become and remain current;
- d. personally contact each customer on the CHWC system and assess each customer's service quality concerns, recording them in writing and, in tabular form, by customer, recording water pressure problems and water aesthetical problems by approximate time of day and by approximate time of year in which these problems occur;
- e. assemble a complete CHWC customer list with customer names, addresses, and phone numbers, and designation as commercial or residential; and
- f. file a report with the PSC, certifying compliance with each of the above requirements and including documentation of compliance (i.e., a copy of the CHWC letter to the water district directors, a letter from DEQ regarding compliance of CHWC, a letter from power company regarding status of CHWC power bill and standing of CHWC as a customer, a copy of documentation of the customer service quality concerns, and a copy of the CHWC customer list).
  - 2. Within 60 days of the service date of this order CHWC must:
- a. be in compliance with all requirements of DEQ pertaining to privately held public water utilities, including licensing of all operators, and testing and monitoring of water supply, or show good cause, verified by documentation from DEQ that satisfactory progress is being made towards compliance by CHWC (if DEQ has imposed more strict times for compliance, CHWC must meet the DEQ times);
- b. develop a plan for improvements necessary to eliminate the service quality problems with the CHWC system, including administrative matters such as accessibility by customers and a comprehensive report, certified by a licensed engineer, which outlines and explains the minimum system repairs and improvements and reasonable operating policies necessary for the CHWC system to provide adequate service on a permanent and sustained basis, with a proposed prioritization of intended improvements;

- c. develop a preliminary plan for rate changes which may become necessary as a result of compliance with this order, including a preliminary draft of operating rules which should apply;
  and
- d. file a report with the PSC, certifying compliance with each of the above requirements and documentation of compliance (i.e., letter from DEQ, plan certified by licensed engineer, preliminary rate proposal).
- 3. Within 120 days of the service date of this order CHWC must complete all necessary improvements to the CHWC system and provide adequate service.

The PSC maintains continuing jurisdiction over this matter, including to approve or disapprove of plans for improvement to the CHWC system, require additional information and reports from CHWC at anytime for any reason, including to verify that progress is being made to meet the above requirements, and to pursue any legal action or remedies allowed by law at any time and for any reason, including in the event good cause exists to believe that CHWC is not exercising good faith efforts to comply with this order.

If the CHWC system is transferred to the district, any requirements of this order remaining after the date of transfer are no longer in effect. The PSC encourages CHWC customers to become involved in making the water district operational. The PSC suggests to CHWC and its customers that an operational water district is most probably a preferred means through which the customers of CHWC can improve the existing system or otherwise obtain an adequate water system at least cost.

Done and dated this 26th day of September, 2000, by a vote of 5-0.

NOTE:

# BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

	DAVE FISHER, Chair
	NANCY MCCAFFREE, Vice Chair
	BOB ANDERSON, Commissioner
	GARY FELAND, Commissioner
	BOB ROWE, Commissioner and Presiding Officer
ATTEST:	
Kathlene M. Anderson Commission Secretary	
(SEAL)	

Any interested party may request the Commission to reconsider this decision. A

motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.